

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

STATE OF MISSOURI, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:21-cv-01329-MTS
	)	
JOSEPH R. BIDEN, JR., <i>in his official capacity</i>	)	
<i>as the President of the United States of America,</i>	)	
<i>et al.</i> ,	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

Two days ago, the Court granted Plaintiffs’ Motion for Preliminary Injunction, which preliminarily enjoined Defendants from implementing or enforcing 86 Fed. Reg. 61,555 (Nov. 5, 2021), the Interim Final Rule with Comment Period entitled “Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination,” against any and all Medicare- and Medicaid-certified providers and suppliers within the States of Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming. Doc. [28] at 32 (2021 WL 5564501, at \*16). Defendants appealed, doc. [29], and now ask the Court to stay the Court’s order granting the injunction pending the appeal, doc. [30]. Plaintiffs oppose Defendants’ motion for Stay. *See* doc. [30].

Under Federal Rule of Civil Procedure 62(c), “an interlocutory or final judgment in an action for an injunction” is “not stayed after being entered, even if an appeal is taken,” unless the court orders otherwise. *See also* Fed. R. App. P. 8(a). Courts consider four factors when determining whether a stay pending appellate review is warranted: (1) the likelihood that the moving party will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants

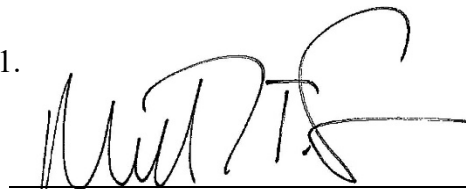
the stay; and (4) the public interest in granting the stay. *See, e.g., Banks v. Cotter Corp. (N.S.L.)*, No. 4:20-cv-01227-JAR, 2021 WL 677912, at \*1 (E.D. Mo. Feb. 22, 2021). The Court does not find these factors weigh in favor of a stay in this case, so the Court will deny Defendants’ Motion for Stay.

*First*, the Court does not believe that Defendants are likely to prevail on the merits of their appeal in this case for the reasons stated in the Order. *See* doc. [28] at 3–23; *see also Louisiana v. Becerra*, No. 3:21-cv-03970, 2021 WL 5609846 (W.D. La. Nov. 30, 2021); *cf. Kentucky v. Biden*, No. 3:21-cv-00055-GFVT, 2021 WL 5587446 (E.D. Ky. Nov. 30, 2021). *Second*, as to irreparable harm absent a stay, Defendants assert “hundreds or thousands of lives [will be] lost each month” if the “vaccination rule were not implemented.” Doc. [31] at 3; *but see* 86 Fed. Reg. at 61,612 (noting that “predicting the full range of benefits . . . in either the short run or the next full year with any degree of estimating precision is all but impossible”). But, in the very regulation at issue, CMS concluded that “the effectiveness of the vaccine to prevent disease transmission by those vaccinated [is] not currently known.” 86 Fed. Reg. at 61,615. Defendants have not shown, then, that such harm is likely. *See also* doc. [28] 14–16, 29–31. *Third*, the Court reiterates its conclusion that “Plaintiffs’ evidence shows that facilities—rural facilities in particular—likely would face crisis standards of care or will have no choice but to close to new patients or close altogether,” which “would cause significant [ ] harm to Plaintiffs’ citizens.” Doc. [28] at 27; *see also id.* at 23–28. *Fourth*, and finally, the Court reiterates its conclusion that the preliminary injunction is in the public’s interest, *see id.* at 29–31, notably, the ability of healthcare facilities to provide proper care, and thus, save lives, such that a stay of the injunction would be against the public’s interest.

After due consideration of these four factors, this case does not warrant a stay of the preliminary injunction pending the appeal. Accordingly,

**IT IS HEREBY ORDERED** that Defendants' Motion to Stay Pending Appeal, doc. [30],  
is **DENIED**.

Dated this 1st day of December, 2021.

A handwritten signature in black ink, appearing to read 'MTS', is written over a horizontal line.

MATTHEW T. SCHELP  
UNITED STATES DISTRICT JUDGE